In The
Supreme Court of the United States
October Term, 1994

NationsBank of North Carolina, N.A., *et al.*,
Petitioners,
v.
Variable Annuity Life Insurance Company,
Respondent.

Eugene Ludwig, Comptroller of the Currency, *et al.*,
Petitioners,
v.
Variable Annuity Life Insurance Company,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Fifth Circuit

BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF LIFE UNDERWRITERS, NATIONAL ASSOCIATION OF PROFESSIONAL INSURANCE AGENTS, AND INDEPENDENT INSURANCE AGENTS OF AMERICA, INC. IN SUPPORT OF RESPONDENT

Ann M. Kappler *
Scott A. Snider
John L. Kelley
Jenner & Block
601 Thirteenth Street, N.W.
Twelfth Floor
Washington, D.C. 20005
(202) [illegible]
Attorneys for Amici Curiae
* Counsel of Record

Wilson - Epes Printing Co., Inc. - 789-0096 - Washington, D.C. 20001

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QUESTIONS PRESENTED

1. Whether the Fifth Circuit misapplied the *Chevron* standard when it did not adopt the Comptroller's new construction of 12 U.S.C. § 24(7) or his new determination that annuities do not constitute "insurance" for purposes of 12 U.S.C. § 92, even though the Comptroller contradicted his prior construction of those statutes. (No. 93-1612).

2. Whether 12 U.S.C. § 92, which provides that, "in addition to" their other powers, national banks located in places with 5,000 or fewer inhabitants may act as the agent for "any fire, life, or other insurance company," impliedly bars national banks in more populous places from brokering annuities. (No. 93-1612)

3. Whether federal law permits national banks, wherever located, to act as agents in the sale of annuities. (No. 93-1613)

4. Whether the sale of annuity contracts is "necessary to carry on the business of banking" under 12 U.S.C. § 24(7).

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NATIONSBANK OF NORTH CAROLINA, N.A., *et al.*,
Petitioners,

v.

VARIABLE ANNUITY LIFE INSURANCE COMPANY,
Respondent.

EUGENE LUDWIG, COMPTROLLER OF THE CURRENCY, *et al.*,
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INTEREST OF AMICI

Amici curiae National Association of Life Underwriters, National Association of Professional Insurance Agents, and Independent Insurance Agents of America, Inc., are non-profit national trade associations that repre-

sent hundreds of thousands of insurance agents and their employees throughout the United States. Many of these agents market and sell fixed and/or variable annuities pursuant to State-issued insurance agency licenses. To the extent these agents sell annuities in North Carolina and South Carolina, they are in direct competition with petitioners, NationsBanc Securities, Inc. and NationsBank of North Carolina, N.A. (collectively "NationsBank"), which seek to sell annuities as agents for life insurance companies.

Amici have a substantial interest in the questions presented here because of their members' involvement in the sale of annuities—an important and growing part of the insurance business. *Amici*'s members are directly threatened by, and concerned with, the entry of banks like NationsBank into the marketplace for insurance. Because of their control of capital, banks necessarily have an unfair advantage in the sale of insurance that is detrimental to both independent agents and the general public. *See, e.g., Barnett Bank of Marion County, N.A. v. Gallagher,* 839 F. Supp. 835 (M.D. Fla. 1993) (explaining that statutory separation of banking and insurance "is for the protection of the solvency of the insurance industry, and the prevention of coercion which in turn protects all potential, present and future policyholders") (appeal pending).

Amici have long maintained that their associations' interest in sustaining and improving the business environment of those engaged in insurance, and protecting the insurance customer, is served by endorsing the separation of banking and insurance as provided under current law. In this regard, *amici* often appear as parties and as *amici curiae* in cases, such as this, raising important questions regarding the power of banks to engage in the business of insurance.

SUMMARY OF ARGUMENT

It is well-settled that national banks—such as NationsBank—are limited to those activities authorized by law. *E.g., Logan County Nat'l Bank v. Townsend,* 139 U.S. 67, 73 (1891). This Court long ago explained that "[t]he measure of their powers is the statutory grant; and powers not conferred by Congress are denied." *Texas & Pac. Ry. Co. v. Pottorff,* 291 U.S. 245, 253 (1934). Section 24 (Seventh) of the National Bank Act enumerates a series of express banking powers so authorized. It also permits a national bank to exercise "all such incidental powers as shall be necessary to carry on the business of banking . . . ." 12 U.S.C. § 24 (Seventh) (emphasis added).

An incidental power must be related to and facilitate the accomplishment of one of Section 24 (Seventh)'s enumerated powers. The "incidental" and "necessary" clause does not confer the unfettered power to engage in the undefined "business of banking." Moreover, the word "necessary" has been ignored by the Comptroller and, quite frankly, by many of the lower courts. But the teachings of this Court emphasize that it is the plain meaning of the statutory language that controls. Necessary, as used in Section 24 (Seventh), cannot mean merely convenient or useful, but rather means "reasonably required." In this case, the language requires that the Comptroller's order be reversed, because the Comptroller has not found —and could not find—that the sale of annuities is "necessary" to the functioning of a national bank.

12 U.S.C. § 92 (Supp. V 1993) ("Section 92"), which limits the sale of insurance to national banks located and doing business in towns of 5000 or less, makes clear that the sale of annuities is not "incidental" and "necessary" for national banks to conduct the business of banking.

Finally, national banks' power to engage in insurance sales cannot be premised on state-chartered banks' pur-

ported authority to do so. Most States completely prohibit or severely restrict their chartered banks from engaging in the sale of insurance products. Moreover, even if this were not the case, the scope of the powers granted to national banks cannot be determined by reference to the powers granted to state-chartered institutions.

ARGUMENT

As a practical matter, the issue presented in this case is narrow: whether every national bank may sell annuities (pursuant to Section 24 (Seventh)) or whether only those national banks located and doing business in towns not exceeding 5000 may engage in that insurance-agency activity (pursuant to Section 92). The Fifth Circuit, in the decision under review, held that national banks may sell annuities only pursuant to Section 92. In reality, this conclusion appears to impose few limitations on national banks' actions. As interpreted by the Comptroller, Section 92 permits the bank to operate out of a branch in a small town, even if its main office is in a large city, and to sell insurance (including annuities) to customers located anywhere.[1] If the Comptroller's interpretation of Section 92 is correct, presumably any national bank that is currently selling annuities (unlawfully) pursuant to Section 24 (Seventh) could simply transfer its activities to a small town branch of the bank. The dire predictions of the national banks in this case must be seen for what they are: a cry of "wolf."

The relevance of this case, however, is much broader. Especially in recent years, the Comptroller has repeatedly

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[1] *See Independent Ins. Agents of Am., Inc. v. Ludwig*, 997 F.2d 958 (D.C. Cir. 1993). This broad interpretation is subject to pending litigation. *See Barnett Bank of Marion County, N.A. v. Gallagher*, 839 F. Supp. 835 (M.D. Fla. 1993), appeal pending, No. 93-3508 (11th Cir.); *NBD Bank, N.A. v. Bennett*, Civ. Action No. IP 94-862-C (U.S. Dist. Ct., S.D. Indiana); *Shawmut Bank Connecticut, National Ass'n v. Googins*, Civ. 3:94CV146 (JAC) (U.S. Dist. Ct., D. Conn.).

and consistently expanded the powers of national banks to engage in non-banking activity—most relevant to *amici*, in the insurance business—purportedly pursuant to Section 24 (Seventh). The Comptroller has affirmatively encouraged national banks, adversely affected by economic forces that prompt consumers to obtain loans from non-bank sources and to place their money elsewhere, to garner revenues from non-traditional sources. Unable to obtain legislation that would permit national banks to expand into these non-banking businesses, the Comptroller has taken an aggressive administrative stance and opened the door to these activities under cover of the *Chevron* doctrine—and not without significant detriment and risk to the bank customer.[2] This case offers the Court an opportunity to instruct the Comptroller that he does not have carte blanche authority to rewrite Congress' carefully crafted legislation which, for the safety and soundness of the banking system, has long maintained the separation of banking and commerce.

I. THE LANGUAGE AND STRUCTURE OF SECTION 24 (SEVENTH) OF THE NATIONAL BANK ACT DO NOT PERMIT THE COMPTROLLER TO AUTHORIZE NATIONAL BANKS TO SELL ANNUITIES.

In granting NationsBank permission to sell annuities in the letter at issue here, the Comptroller failed even to identify the statutory language on which his authorization of annuity powers was based. There is no question, however, that Section 24 (Seventh) does *not* expressly grant

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[2] In a recent survey of purchasers of non-banking products offered by banks, for example, one of the primary conclusions made by the American Association of Retired Persons and the North American Securities Administrators Association was that many bank customers incorrectly believe that the FDIC offers the same protection to mutual funds, stocks and annuities offered by banks that it offers to savings and checking accounts. These customers are convinced to purchase non-banking products from banks under a false sense of security. *See* AARP and NASAA Bank Investment Products Survey (Jan., 1994).

national banks the power to sell annuities. Thus, the only grant of power upon which the Comptroller could rely to defend his interpretation of the section as allowing national banks to sell annuities is the "incidental powers . . . necessary to carry on the business of banking" clause. But the Comptroller made no actual finding that annuity-sales powers are "incidental" and "necessary" to the business of banking.

Even now, petitioners make no attempt to articulate how the sale of annuities is "necessary" to the business of banking. Indeed, they postulate no meaningful definition of the term. The Comptroller *post hoc* states equivocally that "the term *may* mean no more than convenient or useful." Fed. Br. at 23 (emphasis added).[3] NationsBank appears to believe the term should mean "appropriate" or "reasonably conductive to the end to be accomplished," NationsBank Br. at 21, although it does not explain how the sale of annuities fits into even this overly broad definition. In the end, the Comptroller is reduced to asserting that necessary means whatever he says it means. Fed. Br. at 21-22.

Necessary must, however, have *some* meaning. And because no party has argued that selling annuities is reasonably "required" or "essential" to the business of banking, the only issue to be resolved is whether "necessary" can be read so broadly as to be unrecognizable—to mean not essential or needed or even reasonably required, but instead to mean merely "convenient" or "expedient." As demonstrated below, no plausible interpretation of the word necessary, whether that term is read alone or in the context of banking law generally, includes such a broad, tortured definition.

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[3] This *post hoc* rationalization of the agency's action is entitled to no deference. *E.g., Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

A. The Comptroller's Interpretation Is Foreclosed by the Plain Language of the Statute.

"In cases of statutory construction we begin, of course, with the language of the statute." *Diamond v. Chakrabarty*, 447 U.S. 303, 307 (1980) (citation omitted). In construing that language, "[a] fundamental canon of statutory construction is that unless otherwise defined, words will be interpreted as taking their ordinary, contemporary common meaning." *Perrin v. United States*, 444 U.S. 37, 42 (1979) (citation omitted). Thus, in determining the meaning of the term "necessary," "we look to the ordinary meaning of the term . . . at the time Congress enacted the statute" in 1863. *Id.* at 42; *see also MCI Telecommunications Corp. v. American Telephone & Telegraph Corp.*, 114 S.Ct. 2223, 2230 (1994) ("the most relevant time for determining a statutory term's meaning" is when the statute was passed).

"Necessary" has a plain, ordinary, unambiguous meaning: it means "reasonably required," "needed," or "essential." A review of dictionaries in existence during the mid and late 1800s reveals that this was the understanding of the word "necessary" at the time the statute was enacted; indeed many dictionaries defined necessary in an even more restrictive manner. *See, e.g.*, The Universal English Dictionary 216 (1861). ("Indispensably requisite; that cannot be otherwise; needful; conclusive; decisive by inevitable consequence; unavoidable"); A Popular and Complete English Modern Dictionary 870 (1850) ("That must be; that cannot be otherwise, indispensably requisite. Indispensable; requisite; essential; that cannot be otherwise without preventing the purpose intended. Unavoidable."); The American Standard Dictionary of the English Language (1815) ("needful, unavoidable"). Modern dictionary definitions confirm this common-sense understanding of the word. *See, e.g., The Oxford English Dictionary* 275 (1989) ("Indispensable, requisite, essential, needful; that cannot be done without."); Webster's Collegiate Dic-

tionary 790 (9th Ed. 1984) ("Of an inevitable nature: inescapable.").[4]

No dictionary reviewed in existence when the statute was enacted defined necessary as "convenient" or "useful."[5] Thus, it is not surprising that this Court has expressly rejected the definition petitioners proffer. As the Court held, "[a] practice is not within the incidental powers of a [national bank] merely because it is convenient in the performance of an express power." *Texas Pac. Ry. Co. v. Pottorff*, 291 U.S. at 255 n.7.

The plain, unambiguous meaning of the word "necessary" has been recognized by other courts when interpreting the word in the context of other statutes.[6] In *Sunshine Mining v. United States*, 827 F.2d 1404 (9th Cir. 1987), for example, the Ninth Circuit recognized that a "necessary" process is one that is "essential." *Id.* at 1408 (interpreting 26 U.S.C. § 613(c)(2)). Similarly, in *Morrison-Knudsen v. CHG Int'l*, 811 F.2d 1209 (9th Cir. 1987), *cert. dismissed*, 488 U.S. 935 (1988), the court recognized that the FSLIC could not appropriate more power than was expressly granted to it merely by pointing to statutory language allowing it "to do all other things that may be necessary in connection" with its business.

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[4] Petitioners point to only one, contemporary, dictionary definition in which necessary is defined as either "convenient" or "useful" or "inevitable" or "indispensable." That dictionary, however, did not exist at the time the Congress drafted what is now Section 24 (Seventh). Moreover, the existence of "one dictionary whose suggested meaning contradicts virtually all others" is not sufficient to establish that a phrase is ambiguous. *MCI Telecommunications Corp. v. American Telephone & Telegraph*, 114 S.Ct. 2223, 2229 (1994). Instead, the commonly accepted meaning is the one that courts should attribute to the word in question. *Id.*

[5] Indeed, petitioners' briefs notably fail to cite a single definition from a dictionary in existence when the statute was passed.

[6] *See Pierce v. Underwood*, 487 U.S. 552, 563-67 (1988) (using interpretations of similar language in other statutes to decide which of two meanings to give to relevant language).

The agency, the Court noted, was "seek[ing] to burden a word, in this case 'necessary,' with more weight than it reasonably can carry". *Id.* at 1218-19 (interpreting 12 U.S.C. §1729(d)).[7]

B. The Proper Interpretation of the Term "Necessary" Is Confirmed When Read in the Context of Section 24 (Seventh) and the Banking Laws as a Whole.

Reading Section 24 (Seventh) as a whole confirms that necessary means "reasonably required," not merely "convenient" or "useful." Section 24 (Seventh) contains a grant of express powers and also contains a grant of those powers reasonably required—necessary—to effectuate those authorized activities. Petitioners would not only rewrite the definition of necessary but would also ignore the phrase immediately following it: "to carry on the business of banking." Although it might be convenient or useful for banks to offer annuities—it allows them an additional revenue-raising opportunity and provides a service their customers may want—selling annuities does not further the business of banking, as that phrase is properly understood. That is, selling annuities does not further the bank's ability to perform an express bank power, such as deposit taking, credit granting or credit exchanging.[8] And it certainly cannot be said that national banks *reasonably*

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[7] NationsBank's attempt to draw meaning from the term "necessary" as used in the "Necessary and Proper" clause of Article I of the U.S. Constitution, NationsBank Br. at 22, is misguided. First, unlike statutory provisions, constitutional implied powers are construed generously. *See Arnold Tours, Inc. v. Camp*, 472 F.2d 427, 431 (1st Cir. 1972). Second, the term as used in Section 24 (Seventh) is directly tied to specific enumerated banking powers.

[8] That the sale of annuities must relate to one of national banks' enumerated powers was made clear in the New York Court of Appeals' seminal decision in *Curtis v. Leavitt*, 15 N.Y. 2 (1857), interpreting the incidental powers clause of the New York law on which Section 24 (Seventh) was based. The *Curtis* court held that an "incidental" power must be directly related to the exercise of *specified* powers, as well as necessary and useful to give them effect. *Id.* at 157-58.

require the power to sell annuities in order to engage in banking; banks have been effectively engaging in banking since the passage of the statute despite their historic inability to sell annuities.

That necessary means reasonably required or needed is clear when the word is viewed in isolation, clearer when it is read in the context of Section 24 (Seventh) as a whole, and clearer still when read in conjunction with other banking statutes. When Congress wanted to grant financial institutions the ability to exercise all incidental powers that would be convenient or useful—instead of reasonably required or needed—it did so expressly. Throughout banking law, Congress has conferred certain incidental powers that are either necessary *or expedient* to the business of banking.[9] It is therefore clear that Congress, according words their ordinary meaning, does not view the terms necessary and expedient as coextensive. And Congress' failure to include "expedient" or "convenient" language in Section 24 (Seventh) indicates that the only power granted in that section is the incidental power that is "necessary"—reasonably required—and *not* merely expedient or convenient, to the business of banking. *See Russello v. United States*, 464 U.S. 16, 23 (1983), quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972) (" '[W]here Congress includes particular language in one section . . . but omits it in another . . ., it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.' ").

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[9] *See, e.g.*, 12 U.S.C. §§ 2013 ("Each Farm Credit Bank . . . shall have power to— . . . exercise . . . all such incidental powers as may be necessary or expedient to carry on the business of the bank"); 2073 (20) (same as to "[e]ach production credit association"); 2093 (20) (same as to "[e]ach Federal land bank association"); 2122 (16) (same as to "[e]ach bank for cooperatives"); 3012 (18) (National Consumer Cooperative Bank "shall . . . have such other incidental powers as may be necessary or expedient to carry out its duties").

This Court's cases interpreting Section 24 (Seventh) do not contradict this interpretation of the incidental and necessary clause. Often, the Court has looked at the nexus between the expressly authorized activity and the activity in which national banks wanted to engage to determine if the incidental and necessary clause would so allow. In *Texas & Pac. Ry. Co. v. Pottorff*, 291 U.S. 245 (1934), for example, this Court examined a bank's pledge of bonds to a depositor. The bank claimed that the ability to pledge securities to a depositor was incidental and necessary to deposit banking—an expressly authorized power.[10] Because banks had not historically engaged in such practice in the past, the Court held, the activity was clearly not "necessary" to the bank's ability to engage in deposit banking. And although making such pledges might be "convenient in the performance of an express power," that did not bring the activity within the incidental and necessary clause. *Pottorff*, 291 U.S. at 255 & n.7.

Clement National Bank v. Vermont, 231 U.S. 120 (1913) similarly does not support petitioners' argument. In *Clement*, the Court noted that incidental powers are those that " 'are *required* to meet all the legitimate demands of the [bank's] authorized business.' " *Id.* at 140, *quoting First Nat. Bank v. National Exch. Bank*, 92 U.S. 122, 127 (1875) (emphasis added). The Court first recognized that accepting deposits and paying interest were expressly authorized powers. Because the State could unquestionably require the bank to pay taxes on such interest which the bank would then, in turn, charge its depositors, the bank's decision to act as the State's agent, the Court held, fell within the bank's incidental and necessary power. Similarly, in *Franklin Nat. Bank v. New York*, 347 U.S. 373 (1954), heavily relied on by petitioners, this Court construed the incidental and necessary

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[10] "[R]eceiving deposits" is a power expressly conferred by Section 24 (Seventh).

clause as allowing a bank to advertise that it accepted savings deposits, by using the term "savings." Accepting deposits was the expressly authorized activity,[11] the Court held, and changed circumstances—"[m]odern competition for business"—made it reasonably necessary for banks to be able to advertise, truthfully, that they could engage in such activity.[12]

In contrast to this Court's cases, the courts of appeals have revised the statutory provision Congress enacted, rather than interpreting it. Although these courts generally have correctly required that any Section 24 (Seventh) power be directly related or ancillary to the exercise of an express banking power (because Congress has mandated that these subsidiary powers be "incidental"), the courts, like the Comptroller, have simply ignored the separate and independent requirement that an incidental power be "necessary" to the business of banking. *See, e.g., Arnold Tours, Inc. v. Camp*, 472 F.2d 427 (1st Cir. 1972) (holding that an activity "is authorized as an incidental power . . . if it is convenient and useful in connection with the performance of one of the bank's established activities pursuant to its express powers under the National Bank Act" and failing to ac-

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[11] Although petitioners suggest that the banking "activity" in question was advertising, *see* NationsBank Br. at 26, in fact the banking activity at issue was receiving savings deposits. *See Franklin National Bank*, 347 U.S. at 377. The "incidental and necessary" activity was advertising the banking activity in which the bank was engaged, by using the term "savings."

[12] Other cases relied on by petitioners did not require the Court to reach the scope of the "incidental and necessary" clause at all. In *Colorado Nat'l Bank of Denver v. Bedford*, 310 U.S. 41 (1940), for example, offering safe-deposit boxes was found to be implicit in the express grant of power, both because Section 24 (Seventh) places a limit on the ability to conduct safe-deposit business, and because offering safe-deposit boxes was the functional equivalent of accepting "special deposits," an activity that is expressly authorized by the statute. *Id.* at 48-49.

knowledge this Court's rejection of the "convenience" standard in *Pottorff*).

The lax interpretations of Section 24 (Seventh) undertaken by the Comptroller and the courts of appeals over the years have not given full effect to the plain language of that provision; the word "necessary" has been virtually erased from the statute. As dictated by this Court's jurisprudence, that word—purposefully inserted by Congress—must be given the effect that the statutory language requires.

C. The Comptroller Has Not Demonstrated That the Sale of Annuities Is an Incidental and Necessary Bank Power.

The Comptroller seems to believe that if he authorizes a national bank to engage in a certain activity then that activity, *a fortiori*, is "necessary" to allow the bank to conduct its enumerated banking powers. Fed. Br. at 23. Indeed, the Comptroller contends that the courts are not "competent" to judge the question. *Id.* at 42.[13] NationsBank and its *amici* make their position more clear: national banks must be assured that the Comptroller's rulings as to their powers are irreversible. *See* NationsBank Br. at 18; New York Clearing House Ass'n Br. at 4, 7-8. But Congress did not grant the Comptroller unbridled authority to shape national bank powers—to de-

[13] The Comptroller's lack of respect for court decisions invalidating his actions was made clear in the agency's recent letter to Blackfeet National Bank approving the Bank's underwriting and selling of a so-called "Retirement CD," a product Chairman Dingell of the House Committee on Energy and Commerce described as "functionally a deferred life annuity." In the agency's letter, lodged with the Court for its review, the Comptroller made clear that he believes the Fifth Circuit's decision in this case failed to give him proper deference and therefore he would ignore it. Ltr. at 5 n.4. In his letter to the Comptroller, also lodged with the Court, Chairman Dingell recognized that the Comptroller's sanctioning of Blackfeet's actions "directly conflicts" with the Fifth Circuit's *VALIC decision*. Dingell Ltr. at 2.

fine, at his will, the "business of banking." Although the Comptroller may be genuinely and justifiably concerned about the future of national banks, that concern does not permit him to ignore Congress' directives. Without an express statutory authorization, national banks may not engage in any activity unless it is an "incidental power [ ] necessary to carry on the business of banking."

No evidence has been presented, nor was there any finding by the Comptroller, that the sale of annuities meets the proper test for an incidental and necessary power. There is nothing about the sale of annuities that makes them either a necessary means of carrying out the express banking powers or necessary to the business of banking in any other way.

Instead, by a bootstrap approach, petitioners maintain that a bank's sale of annuities is a proper incidental power by claiming that annuities are "similar to" and "resemble" other products sold by national banks, such as securities and certificates of deposit, which in turn have been regarded as falling within the purview of the incidental powers clause. The Comptroller contends that because national banks are purportedly empowered to broker "financial investment instruments" generally, they are permitted to sell any product that the Comptroller believes fits within this amorphous description.

Contrary to petitioners' apparent assumption, however, nothing in the National Bank Act authorizes national banks to "broker[] investment instruments for their customers." Fed. Br. at 22; NationsBank Br. at 19-20. "Financial investment instrument" is not a statutory term that can be interpreted and applied to the particular facts here. The phrase was fabricated by the Comptroller for the purpose of expanding national banks' powers; it appears nowhere in the National Bank Act. Thus, there is no basis for deferring to the Comptroller's conclusion that annuities constitute such so-called "financial investment instruments."

No court has ever authorized national banks' brokerage of "financial investment instruments." [14] Thus, the Comptroller may not permit national banks to broker expensive art, valuable antiques, estate jewelry or coin collections, for example, even though they are often "treated as investment products in the marketplace." NationsBank Br. at 13. This is simply *not* the relevant inquiry under Section 24 (Seventh).

Chairman Dingell succinctly explained the fallacy of the Comptroller's reasoning in a letter to the agency regarding its recent approval of a national bank's marketing of a deferred annuity called a "Retirement CD" (*see* n.13 *supra*):

> Congress most recently refused to repeal this legal separation [between banking and insurance and other forms of commerce] in 1991 when it considered major bank reform legislation that would have allowed banks to engage in commerce. The Bush Administration's argument [15] for this legislation, that banks need a "synergism" among the products they provide, was quite similar to the proclamations of the Comptroller in his letter: "A national bank's express powers allow it to design products which augment its traditional bank activities" and "The Retirement CD is a logical outgrowth of the Bank's business mandate which, as with any bank, is to offer its customers competitive and innovative financial products." This is an interesting idea, but banks simply have no such 'mandate'. This erroneous line of reasoning would

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[14] To the contrary, courts have carefully confined their analyses and decisions to the particular activity at issue. *See, e.g., First Nat'l Bank v. City of Hartford*, 273 U.S. 548 (1927) (power to sell mortgages and evidences of debt). To read these decisions as a broad grant of authority to banks to engage in the sale of any sort of "financial" product is a perversion.

[15] *Modernizing the Financial System: Recommendations for Safer, More Competitive Banks*, Department of the Treasury, February 5, 1991.

> allow banks to do any financial activities they wanted, whether insurance, securities, or any other—and is not only contrary to the laws currently applicable to banks (see, e.g., the GlassSteagall Act), but was also rejected by Congress when it refused to enact the 1991 legislation that proposed granting such powers to banks. (Internal citations omitted).

In any event, there are fundamental and critical differences between the so-called "financial investment instruments" whose sale by national banks have been authorized (because they were found to facilitate one of the expressly enumerated bank powers) and annuities. Unlike a bank's sale of securities and CDs and other debt instruments, a bank's sale of annuities in no way facilitates its essential deposit-taking and credit-granting functions.[16] Unlike a bank's brokerage of securities and futures and options contracts, there is no clearing function involved or performed by a bank in connection with its brokerage of annuities. As recognized by the Comptroller, clearing involves an extension or substitution of the bank's credit for that of its customer—a quintessential banking function. Precisely because of the presence of the clearing aspect involved in a bank's sale of these other products, and the fact that the clearing function is incidental to the express traditional bank powers of credit extension or substitution, the Comptroller has ruled that such sales are an incidental banking function. *See, e.g.*, OCC Ltr. 494 (Dec. 20, 1989), *reprinted in* [1989-1990 Transfer Binder] (Fed. Banking L. Rpt. (CCH) ¶ 83,083.[17] An-

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[16] *See* Edward L. Symons, Jr., *The "Business of Banking" in Historical Perspective*, 51 G. Wash. Law Rev. 676, 718 (1983) ("Since insurance annuities do not serve to support the important deposit-taking and credit-granting functions of banks, such transactions are not incidental to the business of banking.").

[17] As stated in OCC Ltr. 494 pertaining to a bank's sale of securities and futures and options, upon which the Comptroller relied in its ruling at issue:

nuity sales do not have a clearing component. Therefore, the parallels for purposes of the incidental powers clause are illusory.

The Comptroller's assertion that annuities "resemble" certificates of deposit sold by national banks is not only misleading, but wrong. Unlike in a bank's sale of a bank CD to its customer, no debtor-creditor relationship is established between the bank and the customer when the bank sells an annuity. Instead, a debtor-creditor relationship is established *only* between the customer and the insurance company issuing the annuity—not the bank which sells the annuity as an agent for the company. *See, e.g., Crossman Co. v. Rauch,* 263 N.Y. 264, 273 (1934) ("the obligation of the insurance company constitutes a debt from the *company* to the beneficiary under the policy [annuitant]") (emphasis added). This distinguishes the two activities viz-a-viz the bank's enumerated powers, since the debtor-creditor relationship is at the heart of the bank's principle functions.

Furthermore, national banks have never been permitted to engage in, and indeed have not in the past engaged in, the sale of annuities (outside the limited powers conferred by Section 92): the activity is not within national banks' *traditional banking* powers. Nor, before the decisions at issue here, have federal regulators permitted such activity.[18] This distinguishes the sale of annuities from any

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part of this brokerage service—namely, clearing—is itself a credit extension process.

Clearing is related to two other traditional and express bank credit functions in which the bank adds its credit to, or substitutes its credit for, that of its customer—a bank's issuance of bankers' acceptance and letters of credit.

[18] As recently as 1978, the Comptroller ruled that national banks were *not* empowered to sell annuities. *See* Letter from Charles F. Byrd, Asst. Director, Legal Advisory Services Division (June 16, 1978) R. 7-8. It was the Comptroller's abrupt change in this policy that prompted national banks to race into the annuities business.

of the sanctioned activities upon which petitioners would rely. *See, e.g.*, OCC Ltr. 494 (agricultural futures and options contracts); *Colorado Nat'l Bank v. Bedford*, 310 U.S. 41 (1940) (leasing safe deposit boxes).

The fact that banks would like to sell annuities because they generate revenue—which is really the motivating force behind the banking community's attempt to move into this area—cannot translate into the required "incidental and necessary" showing. Nothing said by any party in this case indicates that a national bank reasonably needs annuity-agent powers in order to effectively engage in banking practices. Although the Comptroller might wish national banks had been given a broader grant of authority, his remedy is to seek Congressional action, not to ignore the plain meaning of express statutory terms. *See Board of Governors v. Dimension Fin. Corp.*, 474 U.S. 361, 364 (1986) (holding that it is for Congress, not the agency or courts, to remedy any perceived fault with a federal statute).

II. SECTION 92 DEMONSTRATES THAT CONGRESS DID NOT INTEND SECTION 24 (SEVENTH) TO AUTHORIZE NATIONAL BANKS' SALE OF INSURANCE.

Congress enacted the predecessor of Section 24 (Seventh), including the provision of "incidental" and "necessary" powers, in 1863. Act of Feb. 25, 1863, ch. 58, § 11, 12 Stat. 665, 668. In 1916, then-Comptroller John Skelton Williams wrote in a letter to the Senate Banking and Currency Committee requesting that national banks located in small towns be permitted to act as insurance agents. 53 Cong. Rec. 11001 (daily ed. July 14, 1916). The Comptroller expressed a desire to find a statutory mechanism whereby "the powers of small national banks might be *enlarged* so as to provide them with additional sources of revenue and to place them in a position where they could better compete with local State banks and with

companies which are sometimes authorized under the law *to do a class of business not strictly that of commercial banking.*" *Id.* (emphasis added).[19] Accordingly, the Comptroller proposed an amendment to the National Bank Act.

Noting that national banks were already granted "incidental" and "necessary" powers, Comptroller Williams explained that his proposed amendment was nevertheless required because "[n]ational banks are not given either expressly or by necessary implication the power to act as agents for insurance companies." *Id.*[20] Comptroller Williams therefore clearly understood that a national bank's acting as agent for an insurance company was *not* an "incidental power . . . necessary to carry on the business of banking" under Section 24 (Seventh).

This letter constitutes virtually the entire legislative history of Section 92. *See id.; U.S. Nat'l Bank of Oregon v. Independent Ins. Agents of Am., Inc.*, 113 S. Ct. 2173 (1993). Comptroller Williams' proposed amendment was

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[19] *Amici* Conference of State Bank Supervisors' ("CSBS") suggestion that Section 92 was motivated by Congress' desire to provide insurance agents to customers in small towns is flatly wrong. *See* CSBS Br. at 18-19 & n.9. Rather, Congress was concerned with failing small town banks and wanted to provide them an additional revenue source—revenue they could not earn through their traditional banking business pursuant to Section 24(Seventh). *See* 53 Cong. Rec. 11001 (daily ed. July 14, 1916). Therefore, Congress empowered small town banks (and *only* small town banks) to sell insurance and act as real estate brokers (the latter grant of power being later repealed).

[20] This view conformed with the opinion of the Federal Reserve Board, which ruled that national banks had no authority, express or implied, to engage in insurance agency activities. The Board explained that "[a]ny such *extension* of the powers of national banks must be left to the consideration of Congress." 2 Fed. Res. Bull. 73, 74 (Feb. 1, 1916) (emphasis added). At the time—as now—national banks were granted the power "[t]o exercise . . . all such incidental powers as shall be necessary to carry on the business of banking." *Id.* at 73.

formally introduced on the Senate floor together with Mr. Williams' letter by the bill's sponsor, who referred to the letter as his sole explanation for introducing the amendment. *See* 53 Cong. Rec. S11002 & S11153 (1916). That is, the letter effectively became the sponsor's words endorsing the amendment. Comptroller Williams' comments, explaining both Section 92 and Section 24 (Seventh), are therefore entitled to great deference.[21]

Congress enacted Comptroller Williams' proposed amendment with only slight alteration and without debate or discussion.[22] *See* Act of Sept. 7, 1916, Pub. L. No. 64-270, 39 Stat. 752-53, codified at 12 U.S.C. § 92 (Supp. V 1993). The limited insurance-agency provision was added not as an amendment to Section 24 (Seventh), but rather as a separate stand-alone section. The critical language of Section 92 provides:

> [*i*]*n addition to the powers now vested by law in national banking associations* organized under the laws of the United States any such association located

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[21] *See United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 31 (1982) (explanation of drafter entitled to great weight in determining congressional intent); *Federal Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976) ("As a statement of one of the legislation's sponsors, this explanation deserves to be accorded substantial weight in interpreting the statute."); *NLRB v. Fruit Vegetable Packers & Warehousemen*, 377 U.S. 58, 66 (1964) (Black, J., concurring) ("It is the sponsors that we look to when the meaning of the statutory words is in doubt.").

In addition, as a contemporaneous interpretation of the meaning of the statute by the agency charged with implementing that statute, the 1916 Comptroller statements are entitled to great weight. *See Norwegian Nitrogen Products Co. v. United States*, 288 U.S. 294, 315 (1933). *See also Mountain States T. & T. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 254 (1985) (same); K. Davis, *Administrative Law Treatise* Vol. III § 6.3 at 244 (1994) (same).

[22] The only alternation was an upward revision of the population figure from the 3000 person figure suggested by Comptroller Williams to 5000 persons. 53 Cong. Rec. S11153 (July 14, 1916).

> and doing business in any place the population of which does not exceed five thousand inhabitants . . . may . . . act as the agent for any fire, life, or other insurance company . . . by soliciting and selling insurance and collecting premiums on policies issued by such company; . . . . (Emphasis added).

As the Fifth and Second Circuits have recognized, prior to enactment of Section 92 it was "universally understood that no national banks possessed *any* power to act as insurance agents." *Saxon v. Georgia Ass'n of Indep. Ins. Agents, Inc.*, 399 F.2d 1010, 1013 (5th Cir. 1968) (emphasis in original); *American Land Title Ass'n v. Clarke*, 968 F.2d 150, 155 (2d Cir. 1992) (same), *cert. denied*, 113 S. Ct. 2959 (1993). By its express *addition* to national banks' existing banking powers, Section 92 constituted the sole source of authority for national banks to engage in insurance-agency activity.[23] Section 92 was thought necessary precisely for the reason that, as was universally understood at the time, national banks otherwise had neither the express nor incidental power to sell insurance—of any kind. Section 92 thus reflects Congress' understanding that insurance-agency powers were beyond the power conveyed by the other provisions of the National Bank Act—including the grant of "such incidental powers as shall be necessary to carry on the business of banking."

This is precisely the reasoning this Court used in *Texas & Pac. Ry. Co. v. Pottorff*. In *Pottorff*, the Court held that national banks lack power to pledge their assets to secure a private deposit. 291 U.S. at 251. The Court ruled that such activity was not an incidental and neces-

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[23] This Court has routinely applied the interpretive principle that an affirmative grant of a specific power includes a denial of powers not granted. *See, e.g., Botany Worsted Mills v. United States*, 278 U.S. 282, 289 (1929) ("When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode."); *National R.R. Passenger Corp. v. Passengers Ass'n*, 414 U.S. 453, 458 (1974) (same).

sary power. In so holding, the Court reasoned that an amendment to the National Bank Act to provide *limited* power to pledge assets to secure deposits "indicates that Congress believed that the original act had not granted general power to pledge assets to secure deposits." *Id.* at 258 & n.13 (citing legislative history similar to that of Section 92). The Court noted that the fact that Congress enacted the limited power in a separate section, rather than as an amendment to Section 24 (Seventh), indicated that Congress did not mean merely to clarify that the power of a national bank to pledge its assets to secure deposits was contained in the grant of "incidental" powers. *Id.* Similarly, the enactment of the limited insurance-agency authority in a separate statutory provision (Section 92) refutes any suggestion that it was merely a clarification or so-called "supplementation" of powers already conferred by Section 24 (Seventh).

Faced with the inevitable conclusion to be drawn from Section 92—insurance agency powers are not conferred by Section 24 (Seventh)—petitioners argue that Section 92 pertains to the sale of only "general" lines of insurance, not so-called "special" insurance, such as annuities. It is not at all clear what distinction petitioners intend to draw between different types of insurance,[24] but no such distinction can be found in Section 92.

To begin, the word "general" appears nowhere in the text of the statute. Apparently, petitioners would insert the word so that the statute would read: "act as agent

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[24] The distinction petitioners purport to draw is entirely unprincipled. Other than annuities, it is not at all clear what types of insurance would be excluded under their theory; and, other than "fire" and "life" insurance, it is not clear what would be included. Indeed, it is significant that the Comptroller does not articulate the types of insurance the sale of which is and is not permitted by Section 92. Although it serves his present purposes to argue that Section 92 is a narrow grant of power, in other contexts he is all too willing to interpret the power broadly. *See* 4 & n.1 *supra*.

for any fire, life or other *general* insurance company. . . ." As enacted by Congress, Section 92 imposes no limitation whatsoever on the type of insurance company for which a national bank may act as agent. The plain language indicates that a bank may serve "any" company; fire and life companies are simply examples. There is no other way to understand the statute—without rewriting it, as petitioners would do.

Moreover, petitioners focus on the wrong words. Contrary to the Comptroller's suggestion, Section 92 does not refer to "some 'insurance' sales." Fed. Br. at 41. NationsBank and its *amici* blatantly misrepresent Section 92's provisions, contending that it "specifically enumerate[s]" "fire and life insurance." NationsBank Br. at 46; *see also id.* (referring inaccurately to "Congress' specification of 'fire' and 'life' insurance"); New York Clearing House Ass'n Br. at 29 (referring to the "general forms of insurance enumerated in the provision"). The statute does not refer to or enumerate any form of insurance product. Rather, Section 92 authorizes national banks to "act as agent for *any* fire, life or other *insurance company* . . . by soliciting and selling *insurance* and collecting premiums on policies issued by such company." 12 U.S.C. § 92 (Supp. V 1993) (emphasis added). If there were some limitation imposed by Section 92—and there is not—it would be as to the types of *companies*, not the types of insurance.[25] In any event, Section 92 clearly authorizes small town national banks to act as agents for life insurance companies. Hence, those banks can sell annuities issued by life insurance companies only pursuant to Section 92.

Petitioners argue that courts must construe Sections 92 and 24 (Seventh) harmoniously. *See* NationsBank Br. at 39-40. But this is precisely what the Fifth Circuit did: it correctly construed Section 24 (Seventh)

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[25] Contrary to the Comptroller suggestion, there is no possible grammatical way to read "fire and life" as modifying "insurance," rather than "insurance company." *See* Fed. Br. at 41 n.23.

as *not* authorizing national banks to sell annuities, and Section 92 as conferring limited authority to engage in that activity. To paraphrase NationsBank, Congress obviously saw no tension between the two provisions because Section 24 (Seventh) does not authorize banks to act as agents for insurance companies—that activity is not "incidental and necessary to the business of banking," as the Comptroller and Congress indicated in 1916 when Section 92 was enacted.

Finally, in an effort to avoid Section 92's import, petitioners argue that annuities do not constitute "insurance" within the meaning of Section 92. There is no basis for this argument, as Respondent demonstrates.

As petitioners and their *amici* admit, federal banking law does not define "insurance." But that does not mean that Congress intended the Comptroller to give that term whatever meaning he saw fit. It is not surprising that the 1916 Congress failed to define the term "insurance" as used in Section 92. At the time, it was universally understood that the regulation of the business of insurance was beyond the constitutional power of Congress. *E.g., United States Dep't of Treasury v. Fabe,* 113 S. Ct. 2202, 2207 (1993); *St. Paul Fire & Marine Ins. Co. v. Barry,* 438 U.S. 531, 538 (1978). Indeed, the regulation of insurance was left exclusively to the States. *Fabe,* 113 S. Ct. at 2207. Thus, the only reasonable conclusion is that the 1916 Congress meant to incorporate in the term "insurance" those products defined or regulated as insurance by the various States in 1916. And, as explained more fully in Respondent's brief, the vast majority of States then, as now, defined and/or regulated annuities as "insurance."

Contrary to NationsBank's assertion, NationsBank Br. at 45, the Comptroller has no "special expertise" in determining what is and what is not "insurance." Indeed, no federal agency has such expertise precisely because, pursuant to tradition and federal statute, Congress has left

regulation of the business of insurance to the States. Thus, there is no principled basis for deferring to the Comptroller's judgment that annuities are not "insurance." *See Chevron USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 865 (1984) (deference based on agency's "great expertise").

III. THE BUSINESS PRACTICES OF STATE BANKS DO NOT SUPPORT THE EXTENSION OF THE POWER TO SELL ANNUITIES TO NATIONAL BANKS.

In its *amicus* brief, the American Bankers Association ("ABA") maintains that, because many state-chartered banks are purportedly permitted to sell insurance, national banks should be permitted to sell annuities—a form of insurance.[26] *See* ABA Br. at 12-16. This contention is without merit as a matter of both fact and law.

First, the overwhelming state authority that ABA invokes simply does not exist. The ABA contends that 34 States grant banks at least some insurance sales powers. However, the Appendix the ABA attached to its brief itself demonsratates that the vast majority of States *prohibit or restrict* such powers: of the 34 States the ABA contends permit their banks to sell insurance, 9 limit that grant of authority to state-chartered banks located in small towns—a power commensurate with small town national banks' Section 92 insurance sales authority;[27] an

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[26] *See Variable Annuity Life Insurance Co. v. Clarke*, 998 F.2d 1295, 1300 (5th Cir. 1993) ("All fifty states currently regulate annuities under their insurance laws."); *id.* at n. 2 (citing the state statutes defining annuities as insurance); *Securities and Exchange Comm. v. Variable Annuity Life Ins. Co.*, 359 U.S. 65, 69 (1959) ("all the States regulate 'annuities' under their insurance laws").

[27] These 9 States are Arkansas, Colorado, Florida, Georgia, Kansas, Mississippi, Missouri, New Mexico, and Washington.

additional 4 of these States prohibit the sale of insurance by banks except for those that were engaged in such sales before a specified date;[28] another 2 permit only savings banks to engage in insurance-agency activity;[29] and the ABA's description of the insurance sales authority in at least four other States is simply incorrect.[30]

Thus, most States—at least 35—completely prohibit or severely restrict state-chartered banks from selling insurance. Therefore, even if the ability of state-chartered banks to sell insurance were relevant to the powers granted national banks, it would indicate that the sale of insurance should *not* be considered an incidental power necessary to the business of banking because States generally prohibit state-chartered banks from engaging in that activity.

The ABA's legal assertion that "this Court has held that a power is incidental if it is a 'generally adopted method' of banking," ABA Br. at 13 (quoting *Colorado Nat'l Bank v. Bedford*, 310 U.S. 41, 50 (1940)), is also incorrect. The ABA's contention is improperly premised on the notion that an activity must be considered part of "the business of banking" if state-chartered banks engage in that activity. An activity does not be-

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[28] These States are Connecticut, Kentucky, Louisiana and Texas. Indeed, the United States District Court for the Eastern District of Kentucky recently reaffirmed that Kentucky law generally prohibits banks from selling insurance in a case in which the ABA appeared as an *amicus*. *See Owensboro National Bank v. Wright*, 803 F. Supp. 24 (E.D. Ky. 1992) (appeals pending).

[29] These two States are New York and Massachusetts.

[30] The ABA categorizes Alaska, Minnesota and Tennessee as permitting state-chartered banks to sell insurance, *see* ABA *Amicus* Brief, App. 1, but Alaska Banking Code § 06.05.272(d), implemented on January 1, 1994, specifically prohibits that activity, and Minnesota and Tennessee limit that grant of authority to banks located in small towns. *See* Minn. Stat. § 48:61; Tenn. Code Ann. §§ 42-2-601 and 56-6-201. In addition, Indiana prohibits banks from acting as agent for life insurance companies. *See* In. Fin. Code § 28-11-2.

come part of the "business of banking" just because banks sometimes engage in that activity. Indeed, while the past practice of *national banks* may be relevant to the question of whether a particular practice is "necessary to carry on the business of banking," it certainly is not determinative.

The ABA's contention ignores the reality of our dual banking system: *two* independent banking systems exist in the United States—a federal banking system and a state banking system. In contrast to state-chartered banks, national banks are creatures of federal law, chartered by the federal government. *See Franklin Nat'l Bank v. New York*, 347 U.S. at 375. It is well-settled that national banks "are instruments designed to be used to aid the government in the administration of an important branch of the public service." *Farmers' & Mechanics' Bank v. Dearing*, 91 U.S. 29, 33 (1875). The United States has established this separate national banking system "to perform various functions such as providing circulating medium and government credit, as well as financing commerce and acting as private depositories." *Franklin Nat'l Bank*, 347 U.S. at 375. "[T]he act under which national banks are organized constitutes a complete system of their government." *Pottorff*, 291 U.S. at 253. Put simply, state legislatures cannot grant national banks power not afforded by Congress. Therefore, contrary to the ABA's suggestion, activities in which state-chartered banks may be authorized to engage under state law have no direct bearing on the determination of whether that activity is an "incidental power . . . necessary to carry on the business of banking" within the meaning of 12 U.S.C. § 24 (Seventh).

Colorado National Bank does not suggest otherwise. In that case, the Court did not hold that methods of banking "generally adopted" by state-chartered banks are incidental powers. Instead, the Court found that *national banks* had traditionally engaged in the activity in question —the leasing of safe deposit boxes—and that that activity relates to a core banking function, namely, provid-

ing deposit services, and therefore was impliedly included in that function. *See* 301 U.S. at 50.

Indeed, in proposing that small town banks be permitted to sell insurance, then-Comptroller Williams explained that some States had already chosen to permit their state-chartered banks to engage in that activity, which is "not strictly that of commercial banking." 53 Cong. Rec. 11001 (daily ed. July 14, 1916). When Congress enacted Section 92 in 1916, it "place[d] [national banks] in a position where they could better compete with [those] local State banks." *Id.* If the "generally adopted practice" by small town state-chartered banks of selling insurance would have rendered that activity "incidental" to the business of banking, then enactment of Section 92 would have been wholly unnecessary.

Thus, the ABA's statement that "under New York law a New York State-chartered bank may own a subsidiary engaged in any line of business that is not otherwise unlawful," ABA Br. at 14 (citing *New York State Association of Life Underwriters v. New York State Dept. of Banking*, 83 N.Y.2d 353 (1994)), is completely beside the point because, under *federal* law, a national bank may engage in only specifically authorized activities or in "incidental" activities that are "necessary to carry on the business of banking." The fact that some State legislatures have made the policy decision to permit their state-chartered banks to engage in a whole array of activities beyond the "business of banking" does not mean that national banks can engage in such activities as well. For example, the ABA's 1990 survey of the products and services that state-chartered banks are authorized to provide under state laws found that—unlike under the National Bank Act—many States permit their state-chartered banks to engage in a wide variety of non-banking activities including the operation of travel agencies, providing data processing services, and offering management consultant services. But, the Comptroller does not dispute that the operation of a travel agency is not an in-

cidental power necessary to the business of banking even though, as the ABA has found, many state-chartered banks routinely engage in that activity. *See Arnold Tours, Inc. v. Camp*, 472 F.2d 427 (1st Cir. 1972).

Although *Amici* agree that " 'the powers of national banks must be construed so as to permit the use of new ways of conducting the very old business of banking,' " ABA Br. at 12 (quoting *M&M Leasing Corp. v. Seattle First Nat'l Bank*, 563 F.2d 1377, 1382 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978)), those powers must still be limited to the business of banking. The very old business of selling of insurance simply cannot be construed as being part of that banking business.

CONCLUSION

The authority to act as agent for an insurance company in the sale of insurance, including annuities, is limited to those national banks located and doing business in towns of 5000 or less (pursuant to Section 92); a national bank cannot invoke its "incidental and necessary" power to avoid this statutory limitation.

This Court should affirm the judgment of the court of appeals.

Respectfully submitted,

ANN M. KAPPLER *
SCOTT A. SINDER
JODIE L. KELLEY
JENNER & BLOCK
601 Thirteenth Street, N.W.
Twelfth Floor
Washington, D.C. 20005
(202) 639-6000
Attorneys for Amici Curiae

* Counsel of Record